1-6040-15533-3

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE CITY OF RICHFIELD
HOUSING AND REDEVELOPMENT AUTHORITY

In the Matter of the Kenneth Wren
Residential Relocation Claim

ORDER ON PETITION
FOR RECONSIDERATION

On December 19, 2003, the Richfield HRA filed a Petition for Reconsideration of the Order issued by the Administrative Law Judge on December 11, 2003. Claimant Kenneth Wren filed a Response to the Petition on January 5, 2004. Intervenor Lyndale Gateway LCC filed a reply to the Petition on January 13, 2004.

The Richfield Housing and Redevelopment Authority is represented by Robert J.V. Vose, Esq., Kennedy & Graven, 200 South Sixth Street, Suite 470, Minneapolis, MN 55402. The Claimant, Kenneth Wren, is represented by Jon Morphew, Esq., of the firm of Schnitker & Assoc., P.A., 2300 Central Avenue NE, Minneapolis, MN 55418. Intervenor Lyndale Gateway LCC is represented by David A. Davenport, Esq., of the firm of Winthrop & Weinstine, P.A., 225 S. Sixth Street, Suite 3500, Minneapolis, MN 55402-4629.

This Order is the final administrative decision. Judicial review of this Order and the earlier final decision may be had by Writ of Certiorari to the Minnesota Court of Appeals.

Based upon the filings by the parties, the record in this matter, and for the reasons set out in the Memorandum which follows:

IT IS HEREBY ORDERED THAT: The Petition for Reconsideration is DENIED.

Dated this 23rd day of January 2003.

S/ George A. Beck
GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

The Richfield HRA seeks reconsideration of the Findings of Fact, Conclusions of Law and Order issued by the ALJ on December 11, 2003. Under Minn. Rule pt. 1400.8300, an ALJ must grant reconsideration where a decision is not justified by the evidence or is contrary to law and where to deny reconsideration would be inconsistent

with substantial justice. Although this case is not governed by the Administrative Procedure Act and the rules of the Office of Administrative Hearings, it is appropriate to follow the rule as a guideline in considering the Petition.

The HRA seeks consideration of Findings of Fact Nos. 17, 18 and 31. Finding No. 17 recites the provision of the contract between the HRA and Lyndale Gateway that states the intent of the parties that property is to be acquired through a combination of direct acquisitions by the redeveloper, and acquisitions by the HRA. It also makes the redeveloper responsible for the cost of relocation benefits. Finding No. 18 cites the contract provision that allows Lyndale Gateway to request that the HRA condemn those properties not acquired by Lyndale Gateway by December 15, 2002. And Finding No. 31 cites the portion of the redevelopment plan that authorizes the HRA to acquire property by condemnation for a redeveloper. The Finding also notes that the HRA has never acquired a single-family home through condemnation.

The HRA does not argue that these findings are not supported by the evidence but rather suggests that they should be accompanied by a finding, based upon the testimony of community development director John Stark, who testified that the HRA could have refused the redeveloper's request for condemnation of the Wren property. Mr. Stark also testified that the HRA had previously shown great reluctance in initiating condemnation of single-family homes. The latter testimony is reflected in Finding of Fact No. 31. Mr. Stark also offered his opinion on the ultimate issue here by testifying that the developer was acquiring property for its project, not for the HRA. The HRA seeks an explanation as to why Mr. Stark's testimony was not accepted as a finding of fact.

As the claimant points out, Mr. Stark did not unequivocally state that the HRA would not condemn Mr. Wren's property. Rather, he thought it was unlikely. His testimony is, of course, speculative since it sought to predict what the HRA might do if Mr. Wren had not sold his property to Lyndale Gateway. As such, it is not appropriate for a Finding of Fact. However, it is clear that by contract the redeveloper could request the HRA to use its powers of condemnation and it is also clear that the HRA did condemn some of the commercial properties in the project area. These provisions are appropriately factual findings. The ALJ did not reject the validity of Mr. Stark's opinion as to what might happen. Nor do the findings reject some possibility that the HRA would refuse to condemn Mr. Wren's home. However, as the claimant points out, it is at least questionable whether the HRA would have completely halted the project if Mr. Wren would not have sold his property to Lyndale Gateway. A possibility of a refusal to condemn does not justify a factual finding. For the foregoing reasons the ALJ declines to base a Finding of Fact upon Mr. Stark's opinion.

The HRA also argues that Finding of Fact No. 30, which finds that neither the City nor the HRA ever held title to Mr. Wren's property, has no support in the record since there is no evidence concerning ownership of the property before November 1999 or after June 2003. Since the case law indicates that a city or HRA holding title to redeveloped property can be a factor in determining whether it has undertaken acquisition of the property, this Finding was included to make it clear that at no point

during the redevelopment was title held by the City or HRA. The Respondent is correct, however, in observing that there is no evidence in the record concerning ownership of the property before November 1999 or after June 2003. Because of this the sentence in Finding of Fact No. 30 referenced by the Respondent, is amended to read as follows: "There is no evidence in the record to indicate that either the City or the HRA ever held title to Mr. Wren's property."

Finally, the HRA requests reconsideration of the ultimate conclusion in this matter, namely that the HRA undertook acquisition of Mr. Wren's property. The Respondent argues that the conclusion is contrary to law in that it does not follow the Supreme Court's definition of "acquisition" in Gilliland v. Port Authority of St. Paul.[1] The HRA argues that Gilliland holds that "acquisition" means "to come into possession, control or power of disposal" over property.[2] The HRA suggests that the ALJ's decision adopted the Gilliland dissent which discussed relocation eligibility in terms of the degree of official involvement in the project.

An analysis of Gilliland as precedent must take into account the substantially different facts of that case. Gilliland involved a private redevelopment of a hotel in St. Paul financed by the issuance of industrial revenue bonds by the Port Authority of the City of St. Paul. The Port Authority obtained fee simple title to the hotel and the owners received the bond sale proceeds. The Port Authority then leased the hotel back to its former owners under a 30-year lease with the title reverting to the owners in 30 years upon payment of $1.00.

The Court decided that tenants of the hotel were not entitled to relocation benefits since the issuance of bonds is merely a security arrangement and not an exercise of eminent domain by the Port Authority and therefore cannot be considered an acquisition within the meaning of MURA. The Court cited the definition in Webster's for "to acquire" as "to come into possession, control, or power of disposal." The Court noted that the Port Authority had secured only such rights over the property as were necessary to protect the interests of the bond holders and concluded that relocation assistance under MURA is not available where the governmental action causing displacement is solely the financing of a private rehabilitation project. The dissent found, however, that an acquisition had occurred based upon the actual acquisition of title by the Port Authority and the issuance of bonds with favorable interest rates and tax exempt status.

It could be logically argued that the facts of Gilliland are so different from this case that its holding should not be applied to this case. However, the factual situation in this case does also bring it within the Supreme Court's definition of "acquisition" in that the HRA did undertake the coming into possession and control over Mr. Wren's property. The HRA's argument in its Petition again glosses over the word "undertaken" and fails to give it meaning. The term was not significant based on the facts of Gilliland. In this case the HRA selected the developer to acquire Mr. Wren's property, provided the financing to allow its acquisition and pledged to the developer that it would use its power of eminent domain to sell Mr. Wren's property if he would not sell it voluntarily. This factual pattern, including the possibility of the HRA's exercise of

eminent domain, brings it within MURA and its requirement of relocation benefits. Gilliland, however, is distinguishable because it did not interpret the term "undertaken" and involved merely a security arrangement by the Port Authority rather than the availability of eminent domain.

Having carefully considered the arguments advanced by the Richfield HRA, the ALJ remains convinced that it did undertake the acquisition of Mr. Wren's property within the meaning of Minn. Stat. § 117.52, subd. 1. The substantial involvement by the HRA noted in the prior decision is evidence of the "control" that the Supreme Court majority in Gilliland saw as a factor in the definition of "acquisition." Although the dissent in Gilliland did discuss whether or not the transaction was within the "intended ambit" of "acquisition," the ALJ's discussion of official involvement interpreted the definition of "acquisition" advanced by the Supreme Court majority opinion. As the ALJ's decision stated, this case presents a much more compelling one for official involvement since the HRA's rule went far beyond mere financing to include development of a plan, recruitment, replacement of a developer, interaction with property owners via notices about the project status and a promise to use its power of eminent domain if necessary.

The HRA also expresses concern about how it will determine what degree of public involvement in a redevelopment project triggers relocation eligibility. It suggests that the MURA presently affords clarity on this issue, however that does not seem to be generally true. Trial type decisions seldom provide the degree of guidance that a City would wish to have for future relocation benefit questions. Adjudications decide matters based on the facts of each individual case. It may be that legislative clarification will be necessary to provide greater certainty in this area.

G.A.B.

[1] 270 N.W. 2d 743 (Minn. 1978).
[2] 270 N.W. 2d at 746.